

STATE OF MICHIGAN
IN THE SUPREME COURT
APPEAL FROM THE COURT OF APPEALS
Borrello, P.J., White and Smolenski, J.J.

SHIRLEY RORY and ETHEL WOODS,

Plaintiff-Appellee,

v

CONTINENTAL INSURANCE COMPANY,
a CNA COMPANY,

Defendant-Appellant.

Supreme Court No. 126747

Court of Appeals No. 242847

Wayne County Circuit Court
No. 00-027,278-CK

**AMICUS CURIAE BRIEF ON BEHALF OF
LINDA A. WATTERS, COMMISSIONER OF THE
OFFICE OF FINANCIAL AND INSURANCE SERVICES,
DEPARTMENT OF LABOR & ECONOMIC GROWTH**

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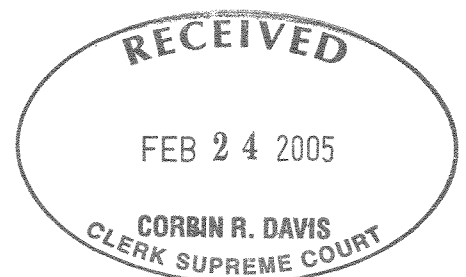


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QUESTION PRESENTED FOR REVIEW

- I. Continental Insurance Company has a provision in its automobile policy that requires policyholders who seek benefits under their uninsured motorist coverage to make a claim or file suit within one year of the accident. Continental denied plaintiffs' claim because it was made after one year. However, Section 2254 of the Insurance Code invalidates any policy provision that prohibits a beneficiary from bringing suit against an insurance company. Does Section 2254 of the Insurance Code bar Continental from enforcing the 1-year deadline in its policy?**

STATEMENT OF PROCEEDINGS AND FACTS

Amicus Commissioner of the Office of Financial and Insurance Services accepts as accurate the Statement of Facts set forth in Plaintiffs/Appellees Brief.

ARGUMENT

I. Section 2254 of the Insurance Code bars Continental Insurance Company from enforcing a condition in its policy that seeks to shorten the time available to make a claim or to file suit to recover benefits.

A. Standard of Review

The Court reviews questions of statutory construction de novo. *Donajkowski v Alpena Power Co*, 460 Mich 243, 248; 596 NW2d 574 (1999).

B. The Commissioner reads Section 2254 to mean that no insurance policy can bar or prohibit a policyholder from filing suit during the time available under the statute of limitations.

Linda A. Watters, the Commissioner of the Office of Financial and Insurance Services, gratefully acknowledges the Court's invitation soliciting her views on the issue presented in this case. This case presents the Court with an opportunity to give a contextual analysis to a consumer protection provision set forth in Section 2254 of the Insurance Code of 1956, MCL 500.2254.

The core facts in this case nicely frame the issue. Plaintiffs Shirley Rory and Ethel Woods suffered injuries in an automobile accident with an uninsured driver on May 15, 1998. Plaintiffs were insured with defendant Continental Insurance Company ("Continental") and had uninsured motorist coverage. On September 21, 1999, Plaintiffs filed suit against Continental seeking no fault benefits, and Plaintiffs also filed a third party suit seeking non-economic damages from the driver. Plaintiffs subsequently learned that the driver was uninsured by her failure to respond to the lawsuit. After learning of the driver's uninsured status, Plaintiffs submitted a letter on March 14, 2000 to Continental making a claim for uninsured benefits. Continental denied the uninsured benefits, relying on a provision in the insurance policy that succinctly stated: "Claim or suit must be brought within 1 year from the date of accident."

After Continental denied the uninsured benefits based upon the contract language, Plaintiffs filed suit against Continental on August 18, 2000 seeking the uninsured motorist benefits.

The trial court ruled against Continental on the grounds that the 1-year limitation period was "unreasonable" because it was shorter than the statute of limitations to file a third party negligence action against the offending driver, in which action the plaintiffs would ascertain whether the driver was insured or not. The circuit court concluded that Continental's one-year deadline for filing claims was unreasonable because it acts as a "practical abrogation of the right of action" and "bars the action before the loss or damage can be ascertained."

The Court of Appeals affirmed the trial court's decision based upon the sole issue of "reasonableness." The appellate court in *Rory v Continental Ins Co*, 262 Mich App 679, 686; 687 NW2d 304 (2004), offered three reasons why the 1-year limitation was not reasonable:

[T]he insured (1) does not have "sufficient opportunity to investigate and file an action," where the insured may not have sufficient information about his own physical condition to warrant filing a claim, and will likely not know if the other driver is insured until legal process is commenced, (2) under these circumstances, the time will often be "so short as to work a practical abrogation of the right of action," and (3) the action may be barred before the loss can be ascertained.

The parties have briefed and will argue the issue of reasonableness before this Court.

Because this issue is covered at length by the parties, the Commissioner of the Office of Financial and Insurance Services will not address it, other than to note agreement with the appellate court analysis. However, the Commissioner believes the solution to this case is found in statutory law, and the Court can decide this case by statutory construction alone.

Section 2254 of the Insurance Code, MCL 500.2254, provides:

Suits at law may be prosecuted and maintained by any member against a domestic insurance corporation for claims which may have accrued if payments are withheld more than 60 days after such claims shall have become due. No article, bylaw, resolution or policy provision adopted by any life, disability, surety, or casualty insurance company doing business in this state prohibiting a member or beneficiary from commencing and maintaining suits at law or in equity against such company shall be valid and no such

article, bylaw, provision or resolution shall hereafter be a bar to any suit in any court in this state: Provided, however, That any reasonable remedy for adjudicating claims established by such company or companies shall first be exhausted by the claimant before commencing suit: Provided further, however, That the company shall finally pass upon any claim submitted to it within a period of 6 months from and after final proofs of loss or death shall have been furnished any such company by the claimant. (Emphasis added.)

The Commissioner reads Section 2254 to mean that no insurance policy, by its contract language, may bar or prohibit a policyholder from filing suit, other than the two exceptions stated, during the 6-year statute of limitations for actions or damages due to breach of contract. MCL 600.5807(8). The interpretation of the statute just advanced follows many of the prime rules of statutory construction. The express mention of some things implies the exclusion of other similar things. *Sebewaing Industries, Inc v Village of Sebewaing*, 337 Mich 530, 545; 60 NW2d 444 (1953). Courts construe an act as a whole to harmonize its provisions and carry out the purpose of the Legislature. *Macomb County Prosecutor v Murphy*, 464 Mich 149, 159; 627 NW2d 247 (2001). Interpretations must be avoided that are tantamount to adding to or deleting from a statute's actual words. It is a well-established rule of statutory construction that this Court will not read words into a statute. *Byker v Mannes*, 465 Mich 637, 647; 641 NW2d 210 (2002).

The text of Section 2254 provides for only two exceptions to this rule prohibiting policy limitation periods or deadlines. The first exception permits insurance companies to provide for alternative dispute resolution mechanisms, such as internal appeals or arbitration, and requires members to exhaust any internal remedy prior to commencing suit. The legislative policy embodied in the first exception requires an insurance claimant to exhaust any reasonable remedy for adjudicating a claim prior to commencing suit against the insurer. *Campbell v Community Service Ins Co*, 73 Mich App 416, 419; 251 NW2d 609 (1977). The second exception requires insurance companies to make a determination on submitted claims within a six month window of

time. This provision gives the insurance industry a reasonable window of time in which to make a decision on a claim.

An argument could be advanced that the one-year time deadline is not an outright prohibition on filing suit because it does not bar lawsuits, rather merely places a condition on when they can be filed. This argument fails when viewed through the contextual prism. The words of a statute must be read in the context of everything which the statute says, and not in isolation, because words that normally mean or imply one thing can take on another meaning in light of their setting or context. This Court explained this principle in *Koontz v Ameritech Services, Inc*, 466 Mich 304, 318; 645 NW2d 34 (2002):

"Contextual understanding of statutes is generally grounded in the doctrine of *noscitur a sociis*: 'it is known from its associates,' see Black's Law Dictionary (6th ed), p 1060. This doctrine stands for the principle that a word or phrase is given meaning by its context or setting." *Brown v Genesee Co Bd of Comm'rs* (After Remand), 464 Mich 430,437; 628 NW2d 471 (2001), quoting *Tyler v Livonia Schs*, 459 Mich 382, 390-391; 590 NW2d 560 (1999).

The "foremost rule" of statutory construction "is to discern and give effect to the intent of the Legislature." *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). The question, therefore, is what did the legislature mean in Section 2254 of the Insurance Code when it used the word "prohibit[]," in the phrase, "No . . . policy provision adopted by any . . . casualty insurance company . . . prohibiting a member or beneficiary from commencing and maintaining suits at law or in equity against such company shall be valid. . ." In isolated context, "prohibit" means "to refuse to permit; to forbid by law or by an order." *Webster's New World Dictionary* (3rd ed), p 1075. The insurer may argue that there is no prohibiting language in the policy at issue because it does permit lawsuits if certain conditions, namely the deadline, are met. However, the counterargument is when the phrase is placed in its "contextual understanding," *Koontz, supra* at 318, Section 2254 compels the conclusion that the insurer's shortened filing

deadline is unauthorized and invalid. "The statutory language must be read and understood in its grammatical context, unless it is clear that something different was intended." *Sun Valley Foods, supra*, at 237.

This is so because MCL 500.2254 does allow two conditions to be imposed in the policy language, namely the statute permits insurance policies to require that claimants 1) first exhaust any alternative remedies, e.g., arbitration, mandated by the policy, and 2) give the insurer six months to decide a claim before suing. By allowing these two exceptions, Section 2254 defines "prohibit" to mean that other conditions cannot be imposed on top of the two already created. By expressly authorizing two conditions, but only two, Section 2254 necessarily means that the "prohibiti[ons]" that invalidates include any other conditions. The maxim *expressio unius est exclusio alterius*, the expression of one thing is the exclusion of another, is applicable. *Feld v Robert & Charles Beauty Salon*, 435 Mich 352, 362; 459 NW2d 279 (1990). This rule of construction expresses the learning of common experience that when people say one thing they do not mean something else. *Id.* If other conditions, such as a 1-year filing deadline, are permitted because they do not outright forbid, but only regulate and modify, then it is pointless to have the two conditions that are in the statute. To specify two conditions if all conditions are acceptable other than an outright bar would be to impermissibly rewrite the statute. Accordingly, the complete text of Section 2254 is acknowledged and given significance only if all conditions, except the two stated ones, are barred. Stated alternatively, to read the statute to allow adding conditions to the two already present, means adding what simply is not there, and not permitted by any reasonable application of the *expressio unius* rule. In sum, Section 2254 means that casualty insurance policies cannot prohibit filing suit based on some additional condition, e.g., an arbitrary deadline, other than the two exceptions carved into the statute.

Appellant Continental makes the argument that it is established law in Michigan that an insurer may by contract shorten the statutory six year limitations period for bringing a breach of contract action. Appellant relies on earlier decisions by this Court in *The Tom Thomas Organization, Inc v Reliance Ins Co*, 396 Mich 588; 242 NW2d 396 (1976); *Morley v Automobile Club of Michigan*, 458 Mich 459; 581 NW2d 237 (1998), reh den 459 Mich 1204 (1998). The Commissioner does not dispute the rulings in those cases; however, Section 2254 was not considered in any of those decisions, and as noted in *Tom Thomas, supra*, at 597, fn 10, "A point 'neither considered by the Court nor discussed' is not decided."

Therefore, the Commissioner urges this Court to examine Section 2254 and apply it to the facts at issue. Although Section 2254 has not been considered by the appellate courts in previous decisions, that past oversight should not hinder this Court from now considering the statute and interpreting its application to the issue at hand. This Court has the authority to decide cases on grounds not presented below. MCR 7.316(A)(3); *Wayne Co v Britton Trust*, 454 Mich 608, 620 fn 9; 563 NW2d 674 (1997). The fact that amici curiae clearly present the argument enables this Court to consider it. *Allen Park Village Council v Allen Park Village Clerk*, 309 Mich 361, 363; 15 NW2d 670 (1944); *Bitar v Wakim*, 456 Mich 428, 438; 572 NW2d 191 (1998) (Weaver, J., dissenting). This Court has said that the doctrine of *stare decisis*, which furthers the interests of stability and continuity in the judicial process, will not always control when considering whether to overrule a previous decision of the Court that ignored a statute that should have been considered. *People v Cornell*, 466 Mich 335, 358, fn 14; 646 NW2d 127 (2002).

In *Auto Club Insurance Assoc v Comm'r of Insurance*, 144 Mich App 525, 530-531; 376 NW2d 150 (1985), the Court of Appeals discussed at some length the deference that should be accorded to the Commissioner as the person charged by statute to enforce the insurance laws:

The Commissioner of Insurance, as chief officer of the Insurance Bureau, MCL 500.202(1), is statutorily charged with the enforcement of the insurance laws of this state. MCL 500.200. The commissioner must effectuate the purposes and execute and enforce the provisions of the insurance laws. MCL 500.210.

"[The] construction placed upon a statute by the agency legislatively chosen to administer it is entitled to great weight." *Davis v River Rouge Bd of Ed*, 406 Mich 486, 490; 280 NW2d 453, 454 (1979), citing *Magreta v Ambassador Steel Co (On Rehearing)*, 380 Mich 513, 519; 158 NW2d 473 (1968). Accord, *Federal Election Comm v Democratic Senatorial Campaign Committee*, 454 US 27, 39; 102 S Ct 38, 46; 70 L Ed 2d 23, 34 (1981): "[The] task for the Court of Appeals was not to interpret the statute as it thought best but rather the narrower inquiry into whether the Commission's construction was 'sufficiently reasonable' to be accepted by a reviewing court."

Accordingly, the Commissioner asks this Court to give deference to her construction of Section 2254, and to concur that the plain meaning of Section 2254 as applied to this case is to bar Continental from enforcing its 1-year filing deadline.

CONCLUSION

The public policy of this state, as expressed in Section 2254 of the Insurance Code, prevents insurance companies from erecting artificial barriers such as arbitrary filing deadlines that act to prevent policyholders from receiving the benefits they are entitled to under their policies.

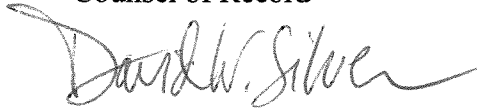
RELIEF SOUGHT

The decision of the Court of Appeals should be affirmed, and the Court should interpret Section 2254 of the Insurance Code to bar Continental from imposing an arbitrary deadline in which to file suit for benefits under its uninsured motorist policy.

Respectfully submitted,

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